

REMARKS

Claims 1-13 are pending herein. Claims 4, 6, 10 and 11 have been withdrawn as being directed to a non-elected invention. By this Amendment, claim 1 has been amended and new claims 12 and 13 have been added.

Claim 1 has been amended to narrow the core-shell polymer (A) as set forth in the claim. Support for the amendment to claim 1 can be found in the specification at, for example, pages 8-9. Claim 1 has also been amended to delete the phrase beginning with the term "advantageously".

Claim 12 has been added to limit the compositions of claim 1 to those consisting of the thermoplastic polyester and the impact modifier. Claim 13 limits the compositions of claim 1 to those wherein the impact modifier consists of the core-shell polymer (A) and the ethylene copolymer (B).

In the Office Action, claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP '680. These claims are further rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP '985. In addition, claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. § 112, second paragraph, and provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and withdrawal of the rejections set forth in the Office Action.

I. Rejection Under 35 U.S.C. § 102(b)/§ 103(a) Based On EP '680

Claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP '680. EP '680 is cited for teaching a polyester impact modified with a blend of ABS and an ethylene/glycidyl methacrylate copolymer. According to the Office Action, use of an ABS core-shell copolymer is anticipated by or would have been obvious over EP '680.

Applicants respectfully submit that instant claims 1-3, 5, 7-9, 12 and 13 is not anticipated by and would not have been obvious over EP '680.

By this Amendment, claim 1 has been amended so that the core-shell copolymer (A) is limited to the core and shell components listed in the claim. As amended, the claim does not include an ABS core-shell copolymer as the core-shell copolymer (A) used in the claimed composition.

EP '680 requires the presence of an ABS copolymer in the composition therein.

At page 1, lines 18-20, EP '680 teaches that:

Surprisingly, it has now been found that a group of specific terpolymers in combination with the ABS polymers show a completely unexpected synergistic effect so that with these combinations good impact values at room temperature can easily be attained at relative low concentrations.

EP '680 does not teach or suggest that a synergistic effect will occur with a core-shell copolymer other than the ABS copolymer. Thus, this reference provides no reason, suggestion or motivation to one skilled in the art to use a different core-shell copolymer.

Therefore, for at least this reason, Applicants submit that claims 1-3, 5 and 7-9 is not anticipated by and would not have been obvious over EP '680.

II. Rejection Under 35 U.S.C. § 102(b)/§ 103(a) Based On EP '985

Claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP '985. This reference is cited for teaching polybutylene terephthalate impact modified with a blend of ABS and an ethylene/glycidyl methacrylate copolymer. According to the Office Action, use of an ABS core-shell copolymer is anticipated by or would have been obvious over EP '680.

Applicants respectfully submit that instant claims 1-3, 5, 7-9, 12 and 13 is not anticipated by and would not have been obvious over EP '985.

EP '985 requires the presence of an acrylonitrile-butadiene copolymer in the composition therein. At page 1, lines 17-21, the reference teaches that:

Surprisingly, it has now been found that a group of specific terpolymers has somewhat better impact modifying properties than the acrylonitrile-butadiene copolymers and terpolymers, and more particularly that combinations of these specific terpolymers with the acrylonitrile-butadiene copolymers and terpolymers show a completely unexpected synergistic action so that with these combinations CNI values at room temperature of 25 J/m² and above can easily be attained.

EP '985 does not teach or suggest that a synergistic effect will occur with a core-shell copolymer other than acrylonitrile-butadiene copolymers. Thus, this

reference provides no reason, suggestion or motivation to one skilled in the art to use a different core-shell copolymer.

Therefore, for at least this reason, Applicants submit that claims 1-3, 5 and 7-9 is not anticipated by and would not have been obvious over EP '985.

III. Rejection Under 35 U.S.C. § 112

Claims 1-3, 5 and 7-9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. According to the Office Action, the language “advantageously” in claim 1 is indefinite.

Claim 1 has been amended to delete the phrase beginning with the term “advantageously”.

In view of the amendment to claim 1, Applicants submit that claim 1 is not indefinite.

IV. Double Patenting Rejection

Claims 1-3, 5 and 7-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6 and 8 of copending U.S. Application No. 09/718,426 (“the ‘426 application” or “the copending application”). The Office Action states that, although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application overlap with the claims of the ‘426 application.

In an Amendment (copy enclosed) filed concurrently with the instant Amendment, Applicants amended claim 1 of the '426 application and added a new independent claim, i.e., claim 11. The claims of the instant application do not conflict with the claims of the copending application in view of amended claim 1 and new claim 11 of the '426 application.

Specifically, in amended claim 1 of the copending application, the (B)/(A) ratio is between 90/10 and greater than 60/40 for proportions of impact modifier between 2 and 40% in 98 to 60% of polyester. In the claims of the instant application, for proportions of impact modifier between 2 and 18% in 98 to 82% of polyester, the (B)/(A) ratio is between 40/60 and 25/75. In new claim 11 of the copending application, the (B)/(A) ratio ranges from 90/10 to a value greater than 40/60 for proportions of impact modifier between 2 and 18% in 98 to 82% of polyester. In the claims of the instant application, as pointed out above, the (B)/(A) ratio at the same proportions of impact modifier and polyester ranges from 40/60 to 25/75. Thus, the (B)/(A) ratio recited in the claims of the instant application does not overlap with the (B)/(A) ratio range recited in new claim 11 of the copending application.

Thus, at similar proportions of impact modifier and polyester, the (B)/(A) ratio of the instant claims does not overlap with the (B)/(A) ratio range recited in the claims of the '426 application.

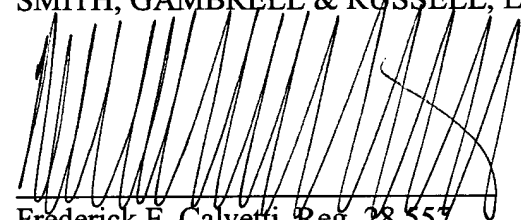
Therefore, for at least the foregoing reasons, Applicants submit that the claims of the instant application do not conflict with the claims of the '426 application.

V. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request that the rejections of claims 1-3, 5 and 7-9 be withdrawn and that these claims, along with new claims 12 and 13, be allowed.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

A handwritten signature in dark ink, appearing to read 'Frederick F. Calvetti', is written over a horizontal line. The signature is stylized with many loops and flourishes. A long, straight diagonal line is drawn from the right side of the signature towards the bottom right corner of the page.

Frederick F. Calvetti, Reg. 28,557
1850 M Street, NW – Suite 800
Washington, DC 20036
Telephone : 202/263-4300
Facsimile : 202/263-4329

Date : August 9, 2002

MARKED-UP VERSION OF AMENDED CLAIM

1. (Twice Amended) Thermoplastic polyester compositions comprising, by weight:

(i) a thermoplastic polyester;

(ii) an impact modifier comprising:

(a) a core-shell copolymer (A); wherein the core consists of one or more polymers selected from the group consisting of isoprene homopolymers, butadiene homopolymers, copolymers of isoprene with at most 30 mol% of a vinyl monomer, copolymers of butadiene with at most 30 mol% of a vinyl monomer, alkyl (meth)acrylate homopolymers, and copolymers of alkyl (meth)acrylate with at most 30 mol% of a vinyl monomer, the vinyl monomer in the core being selected from the group consisting of a styrene, an alkylstyrene and an alkyl (meth)acrylate; further wherein the shell consists of one or more polymers selected from the group consisting of styrene homopolymers, alkylstyrene homopolymers, methyl methacrylate homopolymers, and copolymers consisting of at least 70 mol% of a styrene, alkyl styrene or methyl methacrylate with at most 30 mol% of a vinyl acetate;

(b) an ethylene copolymer (B) chosen from ethylene-unsaturated carboxylic acid anhydride copolymers (B1), ethylene-unsaturated epoxide copolymers (B2) and blends thereof;

(iii) the (B)/(A) ratio being between 40/60 and 10/90 for proportions of impact modifier between 18 and 40% in 82 to 60% of polyester, respectively;

(iv) the (B)/(A) ratio being between 40/60 and 25/75 for proportions of impact modifier between 2 and 18% in 98 to 82% of polyester, respectively[, and advantageously between 5 and 18% in 95 to 82% of polyester respectively].